

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NOS 4649/96 TO 4658/96  
with  
FIRST APPEAL NOS. 4825/96 TO 4847/96  
with  
FIRST APPEAL NOS. 4374/96 TO 4385/96

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and  
MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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EXECUTIVE ENGINEER

Versus

DESAIBHAI SOMABHAI

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Appearance:

MR. MUKESH PATEL, AGP for appellants in FA Nos.4649/96 to 4658/96.

MR. P.G.DESAI, GOVT.PLEADER for appellants in rest of First Appeals.

MR AJ PATEL for Respondents in all the First Appeals.

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CORAM : MR.JUSTICE J.N.BHATT and  
MR.JUSTICE H.R.SHELAT

Date of decision: 22/07/97

ORAL COMMON JUDGEMENT

Admit. Service of notice is waived by L.A. Mr. A.J. Patel. Upon the joint request of Learned Advocates of the parties, the present group of 45 First Appeal is taken up for final hearing, today, and considering the common question involved, the same is being disposed of by this common judgment.

2... In this group of First Appeals under sec.54 of the Land Acquisition Act, the appellants have questioned the legality and validity of the impugned common judgment in three groups of matters and resultant awards in 45 matters, whereby, the Land Acq. Officer offered and awarded an amount of Rs. 2.00 to 3.50 per sq.mt. in the acquisition proceedings for the purpose of Narmada Project Unit-3, Ahmedabad.

3... Notification under sec. 4(1) of the Act came to be published, initially, on 13.12.1985 which later on was modified and finally published again on 13.1.1987 which was followed by the notification under sec.6 of the Act on 29.1.1987 and modified notification came to be published on 22.1.1987. After observing necessary procedure, appellant no.2 - Land Acq. Officer made an offer of Rs. 2.00 to 3.50 per sq.mt. for different parcels of land covered under the said notification. The Land Acq. Officer passed award accordingly.

4... The respondents who are original claimants and owners of the land, being dissatisfied by the award passed by the Land Acq. Officer, made reference under sec.18 of the Act claiming an amount of Rs. 100/ per sq.mt. for their acquired land under the said notification. The claimants, inter-alia, contended that the award made by the Land Acq. Officer in entire group was, inordinately low and highly inadequate. In view of the location, utility, fertility, type of the land and geographical situation of the parcels of lands acquired, the Land Acq. Officer ought to have awarded an amount of Rs. 100/ per sq.mt. as per the contention raised on behalf of the claimants.

5... The appellants herein- original opponents appeared and resisted the claim made by the respondents-original claimants. They supported the offer and award made by the Land Acq. Officer. According to their contention, the award made by the Land Acq. Officer in entire group of matters, was just, reasonable and proper requiring no interference by the reference court under sec. 18 of the Act.

6... After considering the facts and circumstances and pleadings of the parties, issues came to be settled at exh.11 by the reference court and upon examination and analysis of the evidence, it was held that the claimants are entitled to the enhancement of the compensation as they have, successfully, proved that the amount awarded by the Spl. Land Acq. Officer is not proper and is very much inadequate. The reference court, relying on the awards made earlier in respect of proximate parcels of lands and produced at exh.27, 31 and 35, enhanced the market value of the lands and awarded in all an amount of Rs. 70/ per sq. mt. by way of compensation which is directly under challenge in this group of appeals under sec. 54 of the Act.

7.. After having heard the Ld. Govt. Pleader and Ld.Advocate Mr.A.J. Patel for the respondents at a greater length and considering entire evidence which was supplied to us during the course of submissions, we are of the opinion that the contention of the appellants that the assessment of market value for the purpose of compensation under sec. 23 of the Act in respect of parcels of lands covered under the notification is highly excessive and grossly high, cannot be accepted. However, in view of the facts and circumstances emerging from the record of the present case, we are satisfied that in entire group of matters, considering all relevant facts and circumstances, an amount of Rs. 57/ per sq.mt. in respect of parcels of lands covered under the notification in question would be quite justified, reasonable and proper for the following reasons :-

(i) Reliance by the reference court on the award dated 3.9.1994 in case of L.A.Case No.107/97 referred by the 3rd Jt. District Judge,Ahmedabad (Rural) awarding an amount of Rs. 37/ per sq.mt. for the lands which are adjoining the lands covered by the notification in the present group of matters and produced at exh.27 is rightly placed by the reference court. Notification under sec.4(1) was published in that award on 10.3.1983. Award came to be made on 3.9.1994. It is in respect of parcel of land of block no.28 situated in village Ranasan which is about 1/2 KM away from village Limbadia, wherein, the lands in question are situated. Relevant discussions are made by the reference court in paras 19, 21 & 22. Map of village Limbadia was also relied upon which is produced at exh.30. There is no dispute about the fact that the distance between the parcel of land covered under the Award exh.27 in village Ranasan and land covered under the impugned notification of village Limbadia is about 1/2 KM. So, both the lands are

practically nearer within the radius of 1/2 KM only.

(ii) The lands covered under the notification of the present group of matters are also nearer the Airport of Ahmedabad. There is no dispute about the fact that the acquisition for extending run-way for international traffic, land came to be acquired and the award was made which was produced before the reference court at exh.31. The relevant discussion is made by the reference court in para-21 of the judgment at page 35. As per the award exh.31, the market value came to be assessed under sec.23 of the Act at the rate of Rs. 2.50 per sq.mt. The distance between the land covered under exh.31 and impugned award is within the radius of about 1/2 KM.

(iii) There was also one more award produced at exh.35 which is also considered by the reference court which is in respect of lands bearing block nos. 229, 197 and 227 of village Naroda. It is a part of Karai village land. It was acquired for the purpose of ONGC. Parcels of land covered under exh.35 are at the distance of about 1/2 KM from the lands covered under the impugned award. In that case i.e. Karai ONGC land acquisition matters, the amount of assessment of market value was made at Rs.120/ per sq.mt.

(iv) This Court has also had an occasion to consider award exh.27 in FA No.1976/95. The decision was rendered by the Division Bench of this Court on 18.10.1995. The Land Acq. Officer in that case had awarded Rs. 2.50 per sq.mt. by way of compensation which was fixed at Rs. 37/ per sq.mt. by the reference court. The award of the reference court granting Rs. 37/ per sq.mt. as per the award exh.27 was affirmed and confirmed by this Court by rejecting the aforesaid appeal on 18.10.1995. So, the award exh.27 has become final.

(v) It could, therefore, very well be seen from the aforesaid factual scenario emerging from the record of the present case that as per the award exh.27 arising out of Land Ref.Case No.107/87 in respect of the acquisition of adjoining land of village Ranasan for the purpose of GEB produced at exh.27, became final as it was affirmed and confirmed by the Division Bench of this Court in the aforesaid First Appeal on 18.10.1995. Exh.27 shows that village Ranasan and Limbadia are near GIDC Naroda. Nodoubt, exh.35 is in respect of parcel of land made in 1988 acquisition of which was made for the purpose of International Airport, was a consent award granting an amount of Rs. 120/ per sq.mt. of the land acquired for that purpose.

(vi) Reference Court, having regard to the over-all assessment of the facts, has placed reliance on exh.27, in our opinion, rightly so. But after making true and correct appraisal of the evidence in light of the relevant settled proposition of law in this connection, we are of the opinion that instead of Rs. 70/ per sq.mt. as compensation of the land in question, the just and reasonable amount of market value of the land at the relevant time on the date of notification under sec.4(1) i.e. 13.1.1987, would come to Rs. 57/ per sq.mt. in entire group of 45 matters. Therefore, instead of Rs.70/ per sq.mt., the just and reasonable amount of market value, in our opinion, would not be in any case more than Rs. 57/ per sq.mt and, therefore, appeals are required to be allowed partly.

(vii) Exh.27 award granting amount of Rs. 37/ per sq.mt. on 3.9.1994 in Land Ref.Case No.107/97 by 3rd Jt. District Judge, Ahmedabad (Rural), notification in respect of award exh.27 was published on 10.3.1983. The award exh.27 has become final. It is of comparable, reliable unit and award in respect of the land which is hardly 1/2 KM away in village Ranasan from the lands under acquisition of village Limbadia. Obviously, therefore, a reasonable appreciation per year from 1983 to 1987 as notification under sec.4 in the present group of matters was published on 13.1.1987 is to be given. Ordinarily, in absence of any special reasons and specific circumstance, 10% increase every year is required to be considered in respect of lands covered under the impugned award. Considering from that angle, it would come to around Rs. 57/per sq.mt. Therefore, even basing on the award which is comparable produced at exh.27 in respect of acquisition of land made by virtue of notification dated 10.3.1983 and appreciation of market value by 10% from 1983 to 1987, atleast an amount of Rs.57/ per sq.mt. is the just and reasonable assessment of market value of the lands under acquisition in the present group of appeals under sec.23 of the Act, would be just and proper. It may also be stated that Mr. Patel for the respondents has in fairness contended that an amount of Rs. 57/ per sq.mt. instead of Rs. 70/ per sq.mt. will be reasonable and just amount of compensation as the market value. He has also relied upon the decision of the Apex Court in the case of "Gokal v/s State of Haryana," reported in 1992(Suppli)2 SCC 69. The criteria for considering appreciation of land in view of the expected rise in the market value has been clearly expounded. Therefore, our view is also fortified by the ratio of the said decision of the Apex

Court. Nodoubt, Mr. Patel has also relied upon the decision of the Appex Court in the case of "Channaveerappa Gouda v/s Land Acq. Officer," reported in (1992)2 LAL 266 (SC) and thereby he has contended that in respect of compensation under sec.23 for garden land claim put by the claimant was the amount equal to 12 times the net annual income. This decision is not applicable for the simple reason that the yield basis is not considered in absence of evidence in that regard.

(viii) There is no dispute about the fact that the claimants are not entitled to the benefit of the provisions of sec.23(1-A) and sec.23(2) of the Act in respect of additional amount of compensation. Likewise, deduction of 5% government share ordered by the reference court in case if lands are of new tenure cannot be permitted in view of the ratio propounded by the Appex Court in the case of " State of Maharashtra v/s Babu Govind Gavate etc.," reported in AIR 1996 SC 904. Relevant circular of the government would not be applicable in case where transfer of land from new tenure is, involuntary, or under compulsion. Therefore, direction of the reference court in the impugned awards that 5% government share shall be deducted in case of new tenure land is quashed and set aside.

(ix) We may also clarify that the claimants would not be entitled to claim separate compensation for well in view of the decision of the Appex Court in the case of "Spl. Land Acq. Officer v/s Virupax Shankar Nadagauda," reported in (1996)6 SCC 124.

(x) Since the Ld. Advocate Mr. Patel for the respondents has claimed only an amount of Rs. 57/ per sq.mt. by way of compensation for the acquisition of lands covered under the impugned award, we deem it not necessary to discuss other aspects in greater details as in our opinion, an amount of Rs. 57/ per sq.mt. in view of the facts and circumstances and aforesaid evidence and discussion, is just and reasonable.

8... In the result, the impugned awards shall stand modified to the aforesaid extent. An amount of Rs. 70/ per sq.mt., totally awarded to the claimants will stand modified by and substituted with an amount of Rs. 57/ per sq.mt. only in all as total compensation to the claimants for their acquired lands. The claimants will not be entitled to the amount of interest on solatium and solatium on additional amount. Rest of the benefits available under sec.23(1-A) of the Act will be available to the claimants.

9... In view of aforesaid facts and circumstances and discussion, the appeals are partly allowed and the impugned awards are partly modified with no order as to costs.

10... It is brought to our notice that nothing is deposited towards compensation so far by the appellants. In the circumstances, appellants- original respondents are directed to deposit the amount of compensation as per the judgments/awards within a period of 8 weeks from the date of receipt of writ of this order before the reference court.

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